

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

GEORGE TAYLOR,

Plaintiff,

v.

JON LITSCHER, MICHAEL DITTMANN,
ROBERT DOYLE, BRITTANY K. HIBMA,
and MICHAEL STEPHENS,

Defendant.

ORDER

18-cv-63-jdp

Plaintiff George Taylor asks me to reconsider an order in my summary judgment opinion, Dkt. 109, allowing defendants the opportunity to address Taylor's claims for money damages against defendants Jon Litscher and Michael Dittmann through additional briefing. Dkt. 110. Taylor argues that defendants waived their right to address these claims at summary judgment because they didn't address them in their initial summary judgment brief, just as Taylor waived his claims for injunctive relief against Litscher and Dittmann by failing to respond to the state's arguments against those claims in his response brief.

But a court may grant summary judgment on grounds not raised by a party if it gives the parties notice and an opportunity to respond. Fed. R. Civ. P. 56(f)(2). It is "contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of . . . mere technicalities." *Foman v. Davis*, 371 U.S. 178, 181 (1962). If Taylor's claims cannot survive a fully briefed motion for summary judgment, it would be a waste of the parties' and the court's time to allow those claims to proceed to trial, especially when they are the only federal claims remaining from Taylor's complaint.

ORDER

IT IS ORDERED that plaintiff George Taylor's motion for reconsideration, Dkt. 110,
is DENIED.

Entered November 12, 2019.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge